

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

USA,

Plaintiff,

V.

ROBERTO MENDEZ-SANCHEZ,

Defendant.

CASE NO. CR06-425 MJP

ORDER GRANTING MOTION FOR  
COMPASSIONATE RELEASE

This matter comes before the Court on Defendant Roberto Mendez-Sanchez's Motion recommended for Compassionate Release. (Dkt. Nos. 1067, 1074.) Having reviewed the Motion recommended Motion, the Government's Oppositions (Dkt. Nos. 1077, 1078), the Reply (Dkt. 980), and all supporting materials, the Court GRANTS the Motion. The Court also GRANTS Mendez-Sanchez's Motion to File an Overlength Brief. (Dkt. No. 1079.)

## BACKGROUND

Following a jury trial, Mendez-Sanchez was convicted of seven separate drug offenses, including: (1) conspiracy to distribute 500 grams or more of a mixture or substance containing

1 methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), 846; (2) conspiracy to  
 2 distribute 100 grams or more of heroin, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(B),  
 3 846; (3) conspiracy to distribute 500 grams or more of cocaine, in violation of 21 U.S.C. §§  
 4 841(a)(1), 841(b)(1)(B), 846; (4) distribution of cocaine, in violation of 21 U.S.C. §§ 841(a) and  
 5 841(b)(1)(C), 18 U.S.C. § 2; (5) possession with intent to distribute 500 grams or more of a  
 6 mixture or substance containing methamphetamine in violation of §§ 841(a)(1), 841(b)(1)(A), 18  
 7 U.S.C. § 2; (6) possession of cocaine with intent to distribute, in violation of 21 U.S.C. §§ 841(a)  
 8 and 841(b)(1)(C), 18 U.S.C. § 2; and (7) distribution of between 5 and 50 grams of actual  
 9 methamphetamine, in violation of 21 U.S.C. §§ 841(a), 841(b)(1)(A), 18 U.S.C. § 2. (Dkt. Nos.  
 10 731, 784.) As part of its verdict, the jury made findings regarding the drug quantities involved.  
 11 (Dkt. Nos. 731; 1031.)

12 The quantities of drugs charged in the indictment and found by the jury normally carry a  
 13 statutory minimum prison term of 10 years. 21 U.S.C. § 841(b)(1)(A). But in this case the  
 14 Government filed a recidivist Enhanced Penalty Information based on Mendez-Sanchez's prior  
 15 state conviction of conspiracy to deliver a controlled substance. (Dkt. No. 501.) This  
 16 enhancement increased Mendez-Sanchez's applicable mandatory minimum to at least 20 years.  
 17 21 U.S.C. § 841(b)(1)(A).

18 Based on the total quantity of drugs involved in his offenses, Mendez-Sanchez's total  
 19 offense level was 36, his criminal history category was II, and his sentencing range was 240 to  
 20 262 months. (Presentence Report (PSR) ¶ 94 (Dkt. No. 1075).) On February 7, 2008, the Court  
 21 sentenced Mendez-Sanchez, imposing the mandatory minimum term of 240 months of  
 22 imprisonment. (Dkt. Nos. 783, 784.) Mendez-Sanchez received a sentence more than twice as  
 23 long as any sentence imposed on his 27 codefendants. (See Dkt. No. 781 at 4.) Mendez-Sanchez  
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1 has now served over 15 of the 20 years of his sentence, which is at least one-and-a-half times the  
 2 length of the sentence imposed on any of his codefendants. (See Presentence Report at §§ 50-129  
 3 (Ex. 10 to Def. Mot.).) As the Government notes, “[a]ccouting for good-time credits, Mendez-  
 4 Sanchez has served around 17 of his 20-year sentence,” and has a release date of March 7, 2024.  
 5 (Opp. at 3.) Mendez-Sanchez faces an immigration detainer that charges him with being  
 6 removable. (See Dkt. No. 1060-1 at 8.)

7 Mendez-Sanchez now asks the Court for compassionate release under 18 U.S.C. §  
 8 3582(c)(1). He asserts that the following are extraordinary and compelling reasons warranting a  
 9 reduction in his 20-year sentence by a little over 2 years: (1) the predicate offense that resulted in  
 10 a higher mandatory minimum sentence would no longer qualify as a predicate offense; (2) he has  
 11 served more than the 15-year mandatory minimum that would apply had he been sentenced  
 12 today; (3) the rapid spread of the Omicron variant of COVID-19 threatens his safety; and (4) his  
 13 desire to return to Mexico to care for his 73 year-old mother who is in need of assistance.

#### 14 ANALYSIS

##### 15 A. Legal Standard

16 “A federal court generally ‘may not modify a term of imprisonment once it has been  
 17 imposed.’” Dillon v. United States, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)). But  
 18 “[u]nder 18 U.S.C. § 3582(c)(1)(A), Congress provided an exception, sometimes known as  
 19 compassionate release, to reduce a sentence for extraordinary and compelling reasons.” United  
 20 States v. Aruda, 993 F.3d 797, 799 (9th Cir. 2021) (quotation omitted). “[A]s part of the First  
 21 Step Act of 2018, Congress amended § 3582(c)(1)(A) to also allow a defendant to seek a  
 22 reduction directly from the court. . . .” Id. (citing Pub. L. No. 115-391, Title VI, sec. 603(b)(1), §  
 23 3582, 132 Stat. 5194, 5239 (2018)). By its plain language, the First Step Act permits the Court to  
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1 modify a sentence if: (1) the inmate has exhausted administrative review of a request for the  
 2 Bureau of Prisons to move to reduce the sentence; (2) the inmate presents extraordinary and  
 3 compelling reasons for the sentence reduction; and (3) the sentence reduction is “consistent with  
 4 applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A).  
 5 But the Ninth Circuit has concluded that a defendant need not show the requested reduction is  
 6 consistent with the Sentencing Commission’s policy statement, given that it is outdated and  
 7 therefore not “applicable.” Aruda, 993 F.3d at 800-02. In reaching this conclusion, the Ninth  
 8 Circuit adopted the reasoning of “the Fourth Circuit, [that] ‘[t]here is as of now no ‘applicable’  
 9 policy statement governing compassionate-release motions filed by defendants under the recently  
 10 amended § 3582(c)(1)(A), and as a result, district courts are empowered . . . to consider any  
 11 extraordinary and compelling reason for release that a defendant might raise.’” Aruda, 93 F.3d at  
 12 801 (quoting United States v. McCoy, 981 F.3d 271, 284 (4th Cir. 2020) (quotation omitted)).  
 13 The Ninth Circuit has therefore concluded that “the Sentencing Commission’s statements in  
 14 U.S.S.G. § 1B1.13 may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a  
 15 defendant, but they are not binding.” Id. at 802.

16 The Parties dispute whether post-sentencing statutory changes in substantive sentencing  
 17 laws can justify a sentence reduction under Section 3582(c)(1)(A). The Ninth Circuit has yet to  
 18 weigh in on this issue, and the other circuit courts are not in agreement. The First, Fourth, and  
 19 Tenth Circuits have held that a district court may consider the First Step Act’s non-retroactive  
 20 changes to sentencing regimes to be an “extraordinary and compelling” reason that could warrant  
 21 a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) provided the court considers the  
 22 sentencing changes in the particular circumstances of the defendant. See United States v.  
 23 Ruvalcaba, \_\_\_ F.4th \_\_\_, No. 21-1064, 2022 WL 468925, at \*9 (1st Cir. Feb. 15, 2022);  
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1 McCoy, 981 F.3d at 285; United States v. McGee, 992 F.3d 1035, 1047 (10th Cir. 2021). The  
2 Third, Sixth, Seventh, and Eighth Circuits have rejected this approach, noting that doing so  
3 would disregard the limitation Congress placed on retroactive application of sentence reductions  
4 contained in the First Step Act. See United States v. Andrews, 12 F.4th 255, 260-61 (3d Cir.  
5 2021); United States v. Jarvis, 999 F.4d 442, 444-45 (6th Cir. 2021); United States v. Thacker, 4  
6 F.4th 569, 576 (7th Cir. 2021); United States v. Crandall, \_\_\_\_ F.4th \_\_\_, 2022 WL 385920, at \*3  
7 (8th Cir. 2022). The Court finds the reasoning of the First, Fourth, and Tenth Circuit more  
8 persuasive on this issue. As the First Circuit explained, a district court's consideration of the  
9 First Step Act's nonretroactive sentencing changes when assessing a § 3582(c)(1)(A) motion  
10 "is not sullied by a district court's determination, on a case-by-case basis, that a particular  
11 defendant has presented an extraordinary and compelling reason due to his idiosyncratic  
12 circumstances (including that his mandatory minimum sentence under section 841(b)(1)(A)  
13 would have been significantly shorter under the FSA). Ruvalcaba, 2022 WL 468925, at \*10. This  
14 is consistent with Judge Bryan's conclusion that "Section 3582 (c)(1)(A) provides a safety valve  
15 against what otherwise would be a harsh, unjust, and unfair result stemming from a non-  
16 retroactivity clause." United States v. McPherson, 454 F. Supp. 3d 1049, 1053 (W.D. Wash.  
17 2020). And although the Government urges the Court not to follow the First, Fourth, and Tenth  
18 Circuits, it concedes that "[i]f . . . the Court finds some other 'extraordinary and compelling'"  
19 reason exists, it can consider post-sentencing changes in the law in its evaluation of the §3553(a)  
20 factors in determining whether compassionate release is warranted." (Opp. at 7 (citing United  
21 States v. Lizarraras-Chacon, 14 F.4th 961, 966-967 (9th Cir. 2021)).) The Court will therefore  
22 consider the post-sentencing changes created by the First Step Act in determining whether  
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1 Mendez-Sanchez has demonstrated “extraordinary and compelling” reasons specific to his  
2 circumstances to reduce his sentence.

3 **B. Exhaustion**

4 As an initial matter, the Court finds that Mendez-Sanchez has exhausted his  
5 administrative remedies. Indeed, the parties agree on this point. (See Mot. at 3-4 (Dkt. No.  
6 1074); Opp. at 5 (Dkt. No. 1077).)

7 **C. Reduction in Sentence**

8 Having considered the evidence and argument presented, the Court finds extraordinary  
9 and compelling reasons justify a reduction to Mendez-Sanchez’s sentence. The Court bases its  
10 findings on several factors.

11 First, the Court considers the fact that Mendez-Sanchez received a mandatory minimum  
12 sentence that now exceeds the mandatory minimum that the Court would have imposed had it  
13 sentenced Mendez-Sanchez today. Were the Court to sentence Mendez-Sanchez again, it would  
14 impose only the mandatory minimum sentence, as it did initially. Mendez-Sanchez has therefore  
15 served more than the now-applicable mandatory minimum by nearly 2 years, accounting for  
16 “good-time credits.”

17 Second, the Court considers that Mendez-Sanchez’s sentence is more than twice the  
18 length of any sentence imposed upon his 27 other codefendants and he has been incarcerated for  
19 more than one-and-a-half times as long as any of his codefendants. This highlights the  
20 disproportionate nature of Mendez-Sanchez’s sentence.

21 Third, the Court considers that the First Step Act has now made Mendez-Sanchez’s  
22 predicate offense no longer sufficient to trigger the mandatory minimum if he were sentenced  
23 today. The mandatory minimum under § 841(b)(1)(A) now requires the prior offense to be a  
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1 “serious drug felony” which applies “only if the defendant actually served a term of  
 2 imprisonment of more than 12 months.” United States v. Asuncion, 974 F.3d 929, 931 (9th Cir.  
 3 2020), cert. denied, 141 S. Ct. 2544, 209 L. Ed. 2d 564 (2021) (citation and quotation omitted).  
 4 Here, Mendez-Sanchez was only sentenced to 7 months in prison for his prior drug felony. (See  
 5 Dkt. No. 1074-7 at 4.) While the change in the law has no retroactive application, the Court  
 6 considers that had Mendez-Sanchez been sentenced today, his prior drug felony would not  
 7 qualify for the imposition of the mandatory minimum sentence.

8       Fourth, the Court has also considered the threat of the Omicron variant of COVID-19 and  
 9 Mendez-Sanchez’s desire to return to Mexico to assist his aging mother. These factors are not  
 10 particularly extraordinary, though they have some compelling value. Although the Omicron  
 11 variant’s spread has slowed, the risk of adverse health impacts from COVID-19 remain present.  
 12 And Mendez-Sanchez’s desire to care for his aging mother is consistent with Note 1 to U.S.S.G.  
 13 § 1B1.13, which includes consideration of “family circumstances.” While the Court does not  
 14 have a strong record before it of family circumstances justifying early release, the Court notes  
 15 that Mendez-Sanchez would be more productive if he were caring for his aging mother rather  
 16 than continuing to spend time in prison.

17       Together, these factors and considerations greatly undermine the rationale for continued  
 18 incarceration and highlight a fundamental unfairness in continuing Mendez-Sanchez’s current  
 19 sentence. The Court finds that these factors presents compelling and extraordinary reasons that  
 20 justify reducing Mendez-Sanchez’s remaining sentence to time served.

21       The Court also considers Mendez-Sanchez not to be a danger to the community. See  
 22 U.S.S.G. §1B1.13(2). The Court is aware that Mendez-Sanchez has been involved in at least  
 23 three altercations while in custody, including assaulting another inmate in 2014 that fractured his  
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1 skull. (See Dkt. No. 1074-9.) Mendez-Sanchez urges the Court to consider the fact that his last  
2 infraction occurred in 2018, that prisons “can be a very dangerous place where one, at times,  
3 needs to protect himself,” and that he has aged significantly since he committed his underlying  
4 offenses. The Court has carefully considered Mendez-Sanchez’s record in custody. While the  
5 three documented in-custody fights reveal Mendez-Sanchez’ capacity to pose a danger to others,  
6 the Court remains unpersuaded that this past conduct indicates how Mendez-Sanchez will  
7 conduct himself outside of custody. Notably, Mendez-Sanchez has had no disciplinary  
8 infractions since 2018, which suggests a substantial capacity to improve his own self-regulation,  
9 even in the confines of prison. Moreover, Mendez-Sanchez is nearly 50 years old and has  
10 matured significantly since the underlying conduct. The Court sees little risk that Mendez-  
11 Sanchez will be engaged in drug trafficking or violent conduct upon his release.

12 **CONCLUSION**

13 Having considered the evidence and argument of the parties, the Court finds that  
14 extraordinary and compelling reasons justify the reduction of Mendez-Sanchez’s remaining  
15 sentence to time served. The Court therefore GRANTS the Motion and AMENDS the Judgement  
16 as follows:

17 (1) The Court reduces Mendez-Sanchez’s remaining sentence to time served and  
18 Mendez-Sanchez’s shall be released from custody 14 days from the date of this Order to  
19 accommodate a quarantine period with the Federal Bureau of Prisons. If Mendez-Sanchez’s tests  
20 COVID-19 positive at any time during this quarantine period, the Federal Bureau of Prisons shall  
21 notify the Government which will immediately notify the Court so that this Order can be  
22 modified as appropriate; and

(2) The Court withdraws and vacates the term of supervised release contained in the original judgment, particularly in light of the pending ICE detainer and Mendez-Sanchez's desire to return to Mexico.

The clerk is ordered to provide copies of this order to all counsel.

Dated February 25, 2022.

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Marsha J. Pechman  
United States Senior District Judge